

EXHIBIT R

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-60200-brl

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In the Matter of:

CALPINE CORPORATION,

Debtor.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

August 8, 2007

10:55 AM

B E F O R E:

HON. BURTON E. LIFLAND

U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for an Order, Pursuant to 11 U.S.C.
Section 363(b) and Rule 9019 of the Federal Rules of Bankruptcy
Procedures Approving Settlement Agreement Among Pacific Gas and
Electric Company, Delta Energy Center, LLC and Los Medanos
Energy Center, LLC

HEARING re Motion (a) to Authorize the Debtors to Assume
Certain Leases and Executory Contracts Relating to the Debtors'
Gilroy Facility; (b) Approving Certain Amendments Thereto; and
(c) Granting Related Relief

HEARING re Motion to Approve Settlement Agreement Between the
Debtors and Turlock Irrigation District

HEARING re Debtors' Motion for Authorization to Enter into
Stipulation with Second Lien Committee and Wilmington Trust
Company, as Indenture Trustee

HEARING re Debtors' Third Omnibus Objection to Proofs of Claim
(Beneficial Certificate Holder Claims Related to
Rumford/Tiverton Financing, Beneficial Noteholder Claims,
Equity Interest Claims, Hybrid Equity Interest/Beneficial
Noteholder Claims and Unspecified Equity Interest/Beneficial
Noteholder Claims)

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HEARING re Debtors' Twelfth Omnibus Objection to Proofs of
Claim (Amended/Replaced Claims, No Liability Claims,
Duplicative Claims, Claims to be Adjusted, Wrong Debtor Claims
to be Adjusted, Claims Filed by the Fireman's Fund Insurance
Company and PSM Management Claims)

HEARING re Debtors' Thirteenth Omnibus Objection to Proofs of
Claim (No Liability Claims, Anticipatory Claims, Assumed
Contract Claims, Amended/Replaced Claims, Unliquidated Claims,
Claims to be Adjusted and Wrong Debtor Claims to be Adjusted)

HEARING re Debtors' Sixteenth Omnibus Objection to Proofs of
Claim (Claims to be Adjusted, Wrong Debtor Claims to be
Adjusted, Duplicative Claims, Anticipatory Claims, No Liability
Claims, Amended/Replaced Claims, Unliquidated Claims and
Assumed Contract Claims)

HEARING re Debtors' Seventeenth Omnibus Objection to Proofs of
Claim (Claims to be Adjusted, Wrong Debtor Claims to be
Adjusted, Amended/Replaced Claims and No Liability Claims)

HEARING re Debtors' Limited Objection to Convertible Noteholder
Claims

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HEARING re Adversary Proceeding 1-07-01760, Calpine Corporation
v. Rosetta Resources, Pre-Trial Conference

Transcribed by: Lisa Bar-Leib

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20 THE COURT: Very well. I guess, you're waiting to
 21 hear from me. Calpine and it's affiliated debtors seek the
 22 entry of an order granting the debtors' limited objection
 23 pursuant to Section 502 of the Bankruptcy Code and Bankruptcy
 24 Rule 3007 to claims filed by the holders of certain unsecured
 25 convertible debt. The noteholders for that convertible debt

1 object.

2 Between 2000 and 2005 Calpine issue four series of
3 unsecured convertible notes. As of the commencement of these
4 Chapter 11 cases on December 20, 2005, the petition date,
5 convertible notes were outstanding in the aggregate principal
6 amount of approximately 1.8 billion dollars and consisted of
7 approximately 1.3 million dollars four percent convertible
8 senior notes due December 26, 2006, 547 million dollars six
9 percent contingent convertible senior notes due 2014, six
10 hundred and fifty million dollars 7.75 contingent convertible
11 senior notes due 2015 and 634 million dollars 4.75 contingent
12 convertible senior notes due 2023.

13 Generally, the convertible note indentures provide
14 that prior to maturity the holders may convert the notes into
15 cash and/or common stock. Upon the occurrence of one of a
16 number of conditions precedent. As long as no event of default
17 has occurred and provided one of the conversion conditions has
18 transpired converting holders of the 4.75, the six percent and
19 the 7.75 percent notes are entitled to receive (a) repayment of
20 principal in cash and (b) payment of any upside different
21 between the applicable conversion price and Calpine stock price
22 in shares of Calpine common stock. Whereupon conversion the
23 stock price is lower than the strike price the holders are not
24 entitled to full repayment of the principal and may only
25 receive their conversion value in cash. The indentures provide

1 that commencing a Chapter 11 case constitutes an event of
2 default. Upon an event of default all notes shall be
3 "immediately due and payable" without any further action or
4 notice by the trustee or holders. The debtors filing their
5 Chapter 11 cases constituted an event of default under the
6 notes indentures thus rendering the notes due and payable
7 immediately. None of the conversion conditions were satisfied
8 on the petition date. By order dated April 26, 2006 this Court
9 established August 1, 2006 as the bar date for filing proofs of
10 claim.

11 On or about July 19, 2006 Wilmington Trust Company,
12 as indentured trustee for the 7.5 percent notes, filed a proof
13 of claim asserting claims for (a) principal and interest and
14 (b) other unliquidated charges. On or about July 27, 2006 HSBC
15 Bank, as successor indentured trustee for the four percent
16 notes, the six percent notes and the 4.75 percent notes filed
17 two proofs of claim asserting similar claims including "other
18 unliquidated amounts." In connection with the four percent
19 notes and the six percent notes and the 4.75 percent notes no
20 mention was made in the original proofs of claim of any claim
21 by virtue of any loss of a conversion right.

22 On January 5, 2007 the debtors and HSBC entered into
23 a stipulation and order whereby the Court approved on January
24 30th pursuant to which the parties stipulated to allow claims
25 amounts for the principal and pre-petition accrued interest due

1 on account of inter alia each of the four percent notes, the
2 six percent notes and the 4.75 percent notes. The parties
3 reserve for a later date the determination of the appropriate
4 rate of post-petition interest. On March, April and May of
5 2007 the indentured trustees for the convertible notes filed
6 "supplemental" proofs of claims seeking in addition to
7 repayment of outstanding principal and accrued interest damages
8 for "any breach" of the conversion rights, collectively the new
9 claims.

10 On June 20, 2007 the debtors filed their plan and
11 disclosure statement and under the most likely scenario with
12 midpoint valuation and midpoint claims the debtors proposed to
13 pay the noteholders the full amount of their principal and
14 accrued interest as well as post-petition interest thereon at a
15 rate to be determined by the Court together with reasonable
16 pre-petition indentured trustees fees as provided for under the
17 indentures pursuant to the plan.

18 The debtors object to the new claims first on the
19 basis that they were not timely filed. To the extent this
20 Court allows the noteholders to pursue their new claims the
21 debtors would also object to the new claims to the extent they
22 seek payment beyond principal and interest. The official
23 committee of unsecured creditors and the official committee of
24 equity holders join in the debtors' objection to the new
25 claims. Are the new claims timely or untimely? The

1 noteholders filed their new claims approximately eight months
2 after the bar date without first seeking Court approval. The
3 noteholders argue that the new claims are not new claims but
4 rather amendments to the noteholders original claims, I
5 disagree. First, the new claims are not amendments because
6 they do not relate back to the original claims. A claim
7 relates back to a timely filed claim if it "(1) corrects a
8 defect of form in the original claim, (2) describes the
9 original claim with greater particularity or (3) pleads a new
10 theory of recovery on the facts set forth in the original
11 claim." See *Midland Cogeneration Venture Limited v. In re*
12 *Enron*, 419 F.3d 115, 133, (2d Cir. 2005), *U.S. v. Kolstadt*, 928
13 *Fed 2d* 171, 175, (5th Cir. 1991), "amendments to do not vitiate
14 the role of bar dates. Indeed, courts that authorize
15 amendments must ensure that corrections or adjustments do not
16 set off wholly new grounds of liability. Courts must subject
17 post bar date amendments to careful scrutiny to assure that
18 there was no attempt to file a new claim under the guise of
19 amendment," *In re Enron Corp.*, 419 F.3d at 133, citing *In re*
20 *Integrated Resources*, 157 B.R. 66 and 70 (S.D.N.Y. 1993). "A
21 claimant asserting relation back bears the burden of proof," *In*
22 *re Enron Creditors Recovery Corp.*, 2007 W.L. 175, 653 at 5,
23 (Bankr. New York June 13, 2007.) No application was ever made
24 to this Court to bring before this Court the opportunity to
25 pass on these amendments or alleged amendments.

1 Here the new claims do not correct a form defect in
2 the original claims, they do not describe the original claims
3 with more particularity and they do not plead a new theory of
4 recovery on the facts set forth in the original claims.
5 Instead they assert entirely new claims seeking in addition to
6 100 percent of the principal and interest due under the notes a
7 double recovery based on conversion rights, See Ameritrust Co.
8 v. Integrated Resources, 157 B.R. 66, 72 (S.D.N.Y. 1993), "The
9 record contains evidence that the appellee's banks amended
10 proofs of claims seek no interest in the amount of priority in
11 the bank's original claims. This factor alone goes to support
12 three of the five factors that need to be considered when
13 balancing the equities."

14 Moreover the initial claims did not make any
15 meaningful reference to the conversion claims, See Enron 419
16 F.3d at 143, whereas the Court must determine "whether there
17 was a timely assertion of a similar claim or demand evidencing
18 an intention to hold the estate liable." In Re Asia Global
19 Crossing Ltd., 324 B.R. 503, 508, 509, (Bankr. S.D.N.Y. 2005)
20 disallowing late amended claims because among other things the
21 initial claim asserted only a general damage claim and did not
22 provide notice of an amended claim. Although the noteholders
23 have not quantified the new claims the debtors have been led to
24 believe that the amounts claimed could be in the hundreds of
25 millions of dollars. In addition, the noteholders waited

1 nearly eight and in some cases ten months after the bar date to
2 file the new claims which to the extent they are cognizable at
3 all existed on the petition date. See Enron 419 F.3d at 128,
4 "in determining how long is too long, Courts generally consider
5 the degree to which in the context of a particular proceeding
6 the delay may disrupt the judicial determination of the case."
7 The noteholders offer no excuse for this delay which has
8 disrupted the judicial administration of the case in multiple
9 ways. First, the noteholders filed the new claims doing the
10 debtors' formulation of the plan and second, the timing of the
11 new claims forces the debtors to deal with them when they
12 should be focusing on the approval of the disclosure statement
13 and confirmation of the plan. See Enron 419 F.3d at 122 citing
14 *Silivanch v. Celebrity Cruises, Inc.*, 333 F.3d, 355, 368 (2d
15 Cir. 2003), "we and other circuits have focused on the third
16 factor the reason for the delay including whether it was within
17 the reasonable control of the movant."

18 In addition, as already noted the noteholders have
19 led the parties to believe without specifically setting it
20 forth that the amount sought under the new claims would be
21 substantial and in the hundreds of millions of dollars. Indeed
22 they concede that the claim or claims are elephantine in size.
23 To the extent the new claims remain unresolved and unliquidated
24 as of confirmation the reorganized debtors may have to maintain
25 large reserves thereby delaying distributions to other

1 stakeholders who've timely filed proofs of claims and interest.
2 In addition to being time barred the new claims are without
3 merit. A convertible debenture is an indivisible unit. The
4 issuer has but one obligation to meet either redemption or
5 conversion, it can never be required to do both. See Chock
6 Full O'Nuts v. U.S., 453 F.2d, 300 (2d Cir. 1971), likewise
7 the convertible notes debentures do not provide for recovery on
8 account of both debt and equity interest. Instead like all
9 convertible debentures the convertible notes provide the
10 security of a debt instrument but allow the noteholders to
11 benefit from any future upside by converting their notes to
12 cash and common stock. Once the noteholders have converted
13 their notes, however, they no longer hold debt interest to the
14 notes that have been converted. Accordingly, the convertible
15 noteholders cannot possibly be entitled to receive payment of
16 their debt and damages on the account of a conversion right.
17 See 11 U.S.C. 1129(B) (1) (b). See also Chock Full O'Nuts, 453
18 F.2d at 304, "convertible debentures provide for two mutually
19 modes of satisfaction." By repaying the noteholders principal
20 accrued interest in full the debtors are rendering the
21 alternative performance as provided in the indenture. See
22 Chock Full O'Nuts, 453 F.2d at 304, "the alternative to
23 conversion is that the issuer will redeem the debenture or pay
24 it at maturity. In which event the conversion privilege will
25 be terminated." Moreover, the conversion rights were not

1 exercisable as of the petition date when the notes were
2 accelerated and matured. And thus the noteholders do not have
3 allowable claims with respect to the conversion rights, See 11
4 U.S.C. 502(b), a claim filed against the estate must be
5 determined "as of the date of the filing of the petition." In
6 re Einstein Noah Bagel Corp., 257 B.R. 499, 507 (Bankr.
7 District of Arizona 2000.) At the time the case was filed the
8 right to receive cash would not have yet matured because the
9 put right itself had not yet become exercisable.

10 Lastly, even if the new claimants were cognizable
11 they would be susceptible to subordination pursuant to Section
12 510(b) of the bankruptcy code as claims arising from the
13 purchase or sale of a security if the debtors. See Rembroe v.
14 Dufraim, In re Med Diversified Inc., 461 F.3d 251, 259 (2d Cir.
15 2006), "because of the binding agreement between the parties to
16 turn a debt into an equity interest it is reasonably clear that
17 Rembroe's claims was in line with policy concerns underlying
18 Section 510(b)" See in Re Enron Corp., 341 B.R. 141, 162-63
19 (Bankr. S.D.N.Y. 2006) "dealing with subordinating claims
20 arising from ownership of employee stock options and concluding
21 that the broad application of Section 510(b) is now quite
22 settled." In re BT1 Communications, 304 B.R. 601, 608 (Bankr.
23 E.D.N.Y. 2004), "holding nothing in Section 510(b)'s text
24 requires a subordinated claimant to be a shareholder."

25 In conclusion, for the reasons just set forth the new

1 claims were filed after the bar date and accordingly are time
2 barred. Even were the new claims were to be allowed as timely
3 amendments the claims for damages on account of the conversion
4 rights under the indentures would be disallowed or at best
5 subordinated. The four percent notes have already expired by
6 their turns and could not be entitled to conversion right
7 damages under any theory. Accordingly, the debtors' limited
8 objection to the new claims is granted. Settle an order
9 consistent with this decision.

10 MR. KIESELSTEIN: Thank you, Your Honor. I've given
11 counsel's comments regarding the order. We'll puddle and
12 submit and order to Your Honor as soon as possible.

13 THE COURT: Very well. Do you have anything else?

14 MR. SELIGMAN: Your Honor, the only matter that we
15 have left on the agenda was an initial conference with respect
16 to the Rosetta adversary. We would like to take that up in a
17 chambers conference.

18 THE COURT: Sure. We'll do it in chambers after the
19 call.

20 MR. SELIGMAN: Thank you, Your Honor.

21 (Whereupon these proceedings were concluded at 1:21
22 p.m.)
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I N D E X

R U L I N G S

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I N D E X, cont'd

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Lisa Bar-Leib

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